



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**DIVORCE CAUSE NO. 82 OF 2013**

**N N K.....PETITIONER**

**VERSUS**

**J C.....RESPONDENT**

**JUDGMENT**

The petitioner **N N K** filed this petition dated 30<sup>th</sup> October, 2013 seeking the dissolution of her marriage to the respondent **J C**. The respondent was properly served with both the petition and a summons to enter appearance. He did not file any documents in this matter. The case proceeded as an undefended cause.

The petitioner testified before this court on 8<sup>th</sup> September, 2014. She told the court that she and the respondent got married to each other on 4<sup>th</sup> September, 2010 at the Registrar's Office in Mombasa. The marriage certificate serial No. [particulars withheld] provides sufficient proof of the fact of the marriage. The couple then set up their matrimonial home in Ukunda. They bore no children together although the petitioner had one child from an earlier union and the respondent who was a divorcee had two children who lived in his home country of Germany. In her petition the petitioner has accused the respondent of adultery, cruelty and desertion. She states that the respondent who was a pensioner would remain at home while she went out to work. In her absence he would bring women into the house. The petitioner has accused the respondent of committing adultery with a neighbour called 'P'. She states that she often found discharge in the respondent's underwear, leading her to decline to wash his clothes. The petitioner also states that she found her utensils in the house of this 'P'. She suspected that the respondent had taken them there. The petitioner further claims that in the initial stages of their marriage the respondent used to provide for the maintenance and educational costs of her daughter. He later withdrew from providing for the child leaving the petitioner to provide for her singlehandedly. This raft of allegations made by the petitioner remain unchallenged and uncontroverted by any other evidence. The respondent though fully aware of these proceedings opted not to participate in the same. The court has no reason to doubt the testimony of the petitioner.

I am satisfied that there exists sufficient basis upon which to infer adultery on the part of the respondent. The denial of conjugal rights due to the petitioner by the respondent and his refusal to assist in providing for the child amounted to cruelty. Upon being served with this petition in November, 2013 the respondent moved out of the matrimonial home. Since that time the couple have neither met each other nor communicated. The actions of the respondent clearly show that he has no interest in the marriage. This petition for divorce therefore succeeds. Decree nisi to issue to be made absolute within three (3) months o today's date. No order on costs.

**Dated and Delivered in Mombasa this 3<sup>rd</sup> day of November, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Ms. Okech for Petitioner

Court Clerk Mutisya